

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

| | | |
|-----------------------|---|---------------------------|
| Bartz, et al., |) | |
| |) | No. 3:24-CV-05417-WHA |
| Plaintiffs, |) | |
| |) | |
| vs. |) | |
| |) | San Francisco, California |
| Anthropic PBC, |) | October 10, 2024 |
| |) | 11:33 a.m. |
| Defendants. |) | |
| |) | |

BEFORE: THE HONORABLE WILLIAM H. ALSUP, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

INITIAL CASE MANAGEMENT CONFERENCE

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P R O C E E D I N G S

THE COURTROOM DEPUTY: Calling Civil Action 24-5417,
Bartz, et al., vs. Anthropic PBC.

Counsel, please approach the podium. State your
appearances for the record beginning with counsel for
plaintiffs.

MR. NELSON: Good morning, Your Honor. Justin Nelson
from Susman Godfrey representing the Bartz plaintiffs. With me
from Susman Godfrey is Rohit Nath. With me from Lief Cabraser
is Rachel Geman and Reilly Stoler.

THE COURT: Welcome to all of you.

And?

MR. WINTHROP: Good morning, Your Honor. Doug
Winthrop from Arnold & Porter on behalf of Anthropic. I'm here
with my colleagues, Estayvaine Bragg and Jessica Gillotte. And
then my co-counsel here, Joe Wetzel, from Latham & Watkins.

THE COURT: All right. Welcome to all of you.

All right. We're here for a case management
conference. I want -- I've read most of the complaint, but I
want to give you a chance to tell me in two minutes, that's it,
to summarize your case.

And then you'll get two minutes to summarize your
case.

Go ahead.

MR. NELSON: Thank you, Your Honor.

1 This case involves the unauthorized use of hundreds of
2 thousands of copyrighted books that Anthropic is alleged to
3 have taken without permission in something called The Pile.
4 The Pile is a publicly available source that includes within it
5 something called Books3. Books3 is a pirated database of
6 books. The allegations are that Anthropic took that pirated
7 data source and used it to train its large language model and
8 specifically, because books are incredibly important to train
9 that large language model, it knew that it was a pirated
10 dataset, and it, nevertheless, did it.

11 The defense that we think is coming is fair use. We
12 do not think that it is a proper case for fair use. The very
13 kernel of what these books are about is expressive content.
14 How you say something is incredibly important. That is exactly
15 what Anthropic does in training.

16 So this is not something, say, like the *Sega* case,
17 where the intermediate copying was for the non-expressive
18 content. This is directly for the expressive content. And in
19 many ways this is no different from something like *Napster*,
20 where, for example, a teenager cannot download something from
21 the Internet and listen to music without infringing the
22 copyright.

23 Certainly a corporation cannot download a pirated --
24 known pirated website to its own database and then use it for a
25 commercial purpose.

1 Thank you, Your Honor.

2 THE COURT: A very good, short summary. You get an
3 A plus. I don't have to agree with everything, but you did
4 what I asked. In two minutes or less, you summarized the case.

5 Okay. Mr. Winthrop, you get two minutes.

6 MR. WINTHROP: All right. And the bar has been set
7 high, so I will --

8 THE COURT: Be good.

9 MR. WINTHROP: Anthropic is an AI research company.
10 Its core product is Claude, which is a family of large language
11 models. And that's a text-based type of generative AI system
12 that uses deep learning techniques and large data sets to
13 understand, summarize, generate, and predict new content.

14 Anthropic's Claude models performed tasks -- tasks
15 involving language, reasoning, analysis, and coding, among
16 other things. Its users are individuals seeking help with
17 drafting an email, all the way to businesses looking to enhance
18 their internal functions, create complex financial forecasts,
19 that sort of thing.

20 The plaintiffs here, as counsel said, are three
21 authors that they say -- they're asserting a single claim of
22 copyright infringement. A number of the AI copyright cases in
23 the Northern District have many, many claims. This has one
24 claim, a single claim of direct copyright infringement. And
25 the claim is based solely on the theory that Anthropic's

1 intermediate use of copyrighted works to teach its generative
2 AI models statistical patterns about how humans use language
3 constitutes copyright infringement.

4 Critically, this is super important when you think
5 about the other AQ -- AI cases around the Northern District and
6 the country. There is no claim in this case that any output
7 ever generated by any Anthropic AI model is substantially
8 similar to any of the copyrighted works.

9 So this is a classic fair use, a transformation -- a
10 transformative use of taking data, using it to train these
11 machines, to teach it about language, and then something new is
12 created from that.

13 There are procedural issues in this case in terms of
14 whether they have adequately alleged that, in fact, their
15 clients' books were, in fact, in this dataset.

16 THE COURT: Well, they do allege it.

17 MR. WINTHROP: What's that?

18 THE COURT: They do. They certainly allege that they
19 are.

20 MR. WINTHROP: They don't -- we would submit, Your
21 Honor, they don't allege it in any kind of way that's factual.
22 And they do --

23 THE COURT: Why don't you just tell us. Were they or
24 not?

25 MR. WINTHROP: The -- I don't know the answer to that.

1 THE COURT: Well, take a deposition tomorrow.

2 MR. WINTHROP: Yeah, I understand.

3 THE COURT: Let's find out. I'm going to authorize
4 that.

5 MR. WINTHROP: Thank you, Your Honor.

6 THE COURT: And this is ridiculous for you to hide
7 behind that. Either these books were read and part -- in part
8 of your program or they weren't. And for you to say they got
9 to allege it when it's all within the -- your -- your company's
10 records, I don't stand for that.

11 MR. WINTHROP: Yeah. What I was -- just to be clear,
12 what my argument is, Your Honor, is they're alleging the books
13 were in a data set, and then they're saying that dataset was
14 used.

15 Our only point is the dataset is outside, and there --
16 what we're saying is there's no clear allegation that they were
17 in that dataset that they have access to. That's -- to be very
18 clear, that's my point.

19 THE COURT: And is that true, that you don't allege
20 that?

21 MR. NELSON: We absolutely allege it, Your Honor. We
22 allege it, for example, when we talk about the various
23 plaintiffs.

24 THE COURT: I read that -- I read that this morning,
25 And it seemed to me you said that all three plaintiffs, their

1 books were in what's it called Book3.

2 MR. NELSON: Books3, Your Honor. It's paragraphs 56
3 through 58 of the complaint.

4 THE COURT: And -- and so if that's -- why isn't that
5 good enough?

6 MR. WINTHROP: The way -- Your Honor, the way it is
7 phrased, and I'll go to it, is this. If you look at 56, they
8 say, "Plaintiff Bartz is the author of a number of books,"
9 blah, blah, blah. "This novel was included in the Books3
10 dataset, based on public reporting about the dataset. Pirated
11 copies of her work are available online through websites like
12 LibGen and Bibliotek. Bartz is the author and owner of the
13 registered copyrights works."

14 So they're citing websites like LibGen and Bibliotek.
15 They don't -- what our problem is, Your Honor, is that they
16 don't clearly state, like, they've done their work and they
17 have concluded that these books are in Books3.

18 It's a very simple, straightforward argument. If
19 it's -- if they're in there, fine, we move on that -- from
20 that. But that's the critical thing, that the complaint is
21 worded in a very odd way.

22 THE COURT: But why can't they rely upon public
23 reporting?

24 MR. WINTHROP: With what public reporting? Can't
25 they -- shouldn't they say what public reporting? I don't

1 mean -- I don't mean this to be like --

2 THE COURT: Answer that. Help me out here. What
3 public reporting?

4 MR. NELSON: The Atlantic Magazine. The Atlantic
5 Magazine has created basically a facsimile of the Books3
6 database. Prior to alleging these particular books, we ran
7 them through the facsimile of the Books3 database, and all of
8 them were in it. So that is exactly why. We do not have the
9 Books3 -- that's we were careful with what we said, which is
10 the Books3 is Books3, which has its own set of issues, which is
11 a pirated website, Your Honor.

12 So instead of going to a pirated website, we went to
13 the facsimile of the website, which is the Atlantic database,
14 ran those names through, and saw that they all hit upon it.
15 And not just that, the LibGen and Bibliotek references are
16 there to show that it is reasonable to expect, certainly way
17 more than plausible to expect that these are in the Books3
18 database given that they are also in other pirated websites.

19 THE COURT: Well, wait. I didn't understand the last
20 point. When -- you called something Atlantic.

21 MR. NELSON: The Atlantic Magazine, Your Honor.

22 THE COURT: All right. So you went to Atlantic
23 Magazine, and all three of the novels were in the list.

24 MR. NELSON: Thank you, Your Honor. Yes.

25 THE COURT: Is that true?

1 MR. NELSON: Correct.

2 THE COURT: All right. So why is that not good
3 enough?

4 MR. WINTHROP: Because that is not in the complaint,
5 and we talked this morning. And if I -- they saw from the
6 statement one concern we have, and they told me they were going
7 to try to tell me and show me that, in fact, they have this
8 evidence.

9 I am skeptical, Your Honor, but I'm open-minded. I
10 don't want to file a motion.

11 THE COURT: Please don't file one when it's that easy.

12 I want you by the end of the week, show him the
13 Atlantic list. Highlight the names of the three.

14 MR. NELSON: Absolutely, Your Honor.

15 THE COURT: All right. Okay. Now, do you deny that
16 your company uses Books3?

17 MR. WINTHROP: I don't know at this point that the --
18 the full use of the training, but that's -- so that would be a
19 question --

20 THE COURT: That's what's alleged.

21 MR. WINTHROP: Yes --

22 THE COURT: So --

23 MR. WINTHROP: -- I understand.

24 THE COURT: -- why don't you go take the deposition
25 tomorrow of a 30(b)(6) person to find out if they're using

1 Books3.

2 This ought to be -- the facts here should not be in
3 dispute. If it's truly fair use, you should be open about
4 everything that happened --

5 MR. WINTHROP: Yeah.

6 THE COURT: -- and -- and so that they -- we -- okay.

7 Now, what is your answer to his point? His point is,
8 we're not selling pirated copies. We're not going out -- and
9 what's the name of this book? The Last -- the Lost Night, a
10 novel.

11 They're not going out and selling bootleg copies of
12 this novel. Kind of the classic misuse of copyright.

13 What they're doing is, he says, a transformative use,
14 the words in that novel and, as you say, the expression to
15 train their -- what's it called?

16 MR. WINTHROP: It'll a model. Claude.

17 THE COURT: Claude, yes.

18 So that -- I can see the argument. I'm not saying I
19 agree with it. I don't know yet. But tell me, preview what
20 your response to that's going to be.

21 MR. NELSON: Sure. And we'll put aside the output
22 case, whether it actually is transformative. But just this is
23 an input case. The -- the copying of a pirated book is a
24 copyright violation. And the American -- the *A&M Records vs.*
25 *Napster*, 239 F.3d 1004 at 1015, Ninth Circuit, I'm going to

1 quote. "Downloading a file" -- in that case it's downloading
2 an MP3 -- "does not transform a work," period.

3 I would also point Your Honor to the *Texaco* case from
4 the Second Circuit, which the *Napster* case from the Ninth
5 Circuit has cited with approval, which is 60 F.3d 913 and from
6 1994 written by Judge Newman. There was a dissent by
7 Judge Jacobs on it, but that also talks about the intermediate
8 copying for expressive purposes is a copyright violation.

9 And so when the fact that -- for example, even
10 assuming that they are correct that it is transformative on the
11 output side, which we would dispute, but the fact that they are
12 making a copy for their own purposes without permission is not
13 fair use. They do not have permission from that -- to do that.
14 And otherwise that is, again, just to use my analogy from the
15 initial two minutes, it is very much like the *Napster* case,
16 when someone --

17 THE COURT: Well, I see what you're saying. Again,
18 I'm not saying I agree with it or disagree. But let's say
19 that a book editor of the New York Times uses a bootlegged
20 copy, reads it, and does a book review. That's the classic
21 fair use.

22 Why do they even need a license to do that?

23 MR. NELSON: The bootleg copy itself -- we're not
24 talking about the output side of that. But is the editor of
25 the New York Times or the reader himself or herself liable for

1 downloading a piloted book from the website? Absolutely.

2 THE COURT: That's interesting.

3 MR. NELSON: Yeah.

4 THE COURT: I didn't know that. Give me -- give me a
5 case that says that.

6 MR. NELSON: Well, it is -- that's the whole line of
7 *Napster* cases. It's the context of music.

8 And I don't -- you know, I'm happy to be corrected if
9 I'm wrong by Mr. Winthrop, but if there is a download of a
10 pirated book, okay, that download of the book and your use of
11 that is a copyright violation.

12 MR. WINTHROP: To --

13 THE COURT: All right. Go ahead. And then --

14 MR. WINTHROP: Two -- two things: *Napster* was song is
15 inputted; song is listened to by the kid down the block, right,
16 who didn't pay for it. That's *Napster*.

17 What -- what counsel is arguing for essentially would
18 nullify the fair use defense to say that, oh, whenever the
19 person's engaging in fair use, makes an intermediate copy,
20 that's in and of itself a copyright infringement even though
21 the use that is put -- put to it is a -- the classic fair use.

22 So I don't think that is right. The cases he's -- I
23 will go back and look. The cases he's citing are all that --
24 he just said the *Napster* cases. *Napster* is -- there's no
25 transformative use in *Napster*; right? It's a song is copied

1 and a song is played.

2 THE COURT: In the *Oracle* case, which was my case, and
3 the Supreme Court ultimately ruled in there there was exact
4 copying. Exact copying. And the Supreme Court said that was
5 fair use.

6 MR. NELSON: Absolutely, Your Honor. And, in fact --
7 and I just reread that decision, and it was one of the last
8 decisions written by Justice Breyer. And it specifically
9 discusses how software is different from things like books
10 because it is a lower standard and talks about how there's less
11 expressive content.

12 THE COURT: That's true. That's a good point.

13 MR. NELSON: And so -- and, again, we are -- look,
14 there -- there's -- we are not -- we embrace the case law of --
15 of things like the -- you know, *Sega* and -- and cases like
16 that, because we think in those cases those are all about the
17 non-expressive content. That part of it is to make it
18 harmonize, for example, so that the non-*Sega* user or the
19 non-*Sega* company can make it compatible with. That is not for
20 the expressive idea of it.

21 Here there is -- there is no case law. And it would
22 radically transform copyright to say that you can download
23 something, you can use something without permission and use it
24 for its expressive content and not have to pay for that.

25 That's just -- that's not where we're headed, I don't

1 think. I think it would be a radical and -- and really
2 disruptive change to the copyright holders and to intellectual
3 property in this country should it go down that route.

4 And, look, there's no doubt this is an important case.
5 And -- and Mr. Winthrop and my learned colleagues on the other
6 side and we are going to get along fine in terms of the
7 lawyers. But there are fundamental disputes in this case about
8 where we're headed with these issues. And what are the rights
9 of intellectual property holders who basically Anthropic has
10 strip mined the intellectual property, used it. And, again, I
11 don't think we're going to find -- I think we're going to find
12 out that they used Books3. Used it to train their database.

13 And the answer is that, no, no, no, we didn't use
14 Books3, or something similar, but that we have the absolute
15 right to do it for our own commercial purposes because we want
16 to know exactly how a word is strung together. A word is
17 strung together or a sentence is strung together; right? How
18 the word is used; that is, the number and the vectors that go
19 into it, as we described in the complaint about how these large
20 language models work.

21 THE COURT: Okay. Time to give you a schedule.

22 All right. Have you done your initial disclosures?

23 MR. NELSON: They are -- we have proposed, Your Honor,
24 October 25th, which is two weeks and a day. I think their
25 proposal is November 8th.

1 MR. WINTHROP: November 8th. There was a -- all --
2 all parties -- you may have seen this from the report, Your
3 Honor. All parties were confused by the two scheduling orders,
4 and so --

5 THE COURT: October 25.

6 MR. WINTHROP: -- we --

7 THE COURT: Leave to add any new parties or pleading
8 amendments. I'm going to give -- I don't think there will be
9 any, so I'm going to give you until December 4.

10 All right. ADR. What's your plan for ADR?

11 MR. NELSON: Well, Your Honor, given Your Honor's
12 order on class actions --

13 THE COURT: That's right. You -- you're not supposed
14 to. All right. No talking of settlement until we make sure
15 there's a class. Then it's your duty to talk settlement --

16 MR. NELSON: Correct, Your Honor.

17 THE COURT: -- but not yet.

18 All right. Fact discovery cutoff.

19 MR. NELSON: I think we are actually in agreement on
20 fact discovery cutoff for December 4th, 2025, Your Honor.

21 THE COURT: No way. That's too far.

22 MR. NELSON: Okay. The -- the re- -- can I just say
23 with.

24 THE COURT: I'll give you till August 29 next year.

25 MR. NELSON: Okay. Thank you, Your Honor.

1 THE COURT: And that will also be the date your expert
2 report is due if you have the burden of proof on the issue.

3 MR. NELSON: Thank you, Your Honor.

4 THE COURT: I don't think the facts are going to be
5 that disputed. I think it's --

6 MR. NELSON: Your Honor, there -- from -- from prior
7 experience in others of these cases -- and -- and the
8 plaintiffs, for example, represent book authors -- other book
9 authors against OpenAI and Microsoft. And I know the
10 defendants also have some familiarity with these cases as well.
11 There will be, I would say -- even assuming the sort of
12 macro-agreement on facts, there are a number of issues that
13 require looking into the training databases, going and -- and
14 so it -- it will be factual intensive.

15 THE COURT: I'm going to stick with my date. All
16 right. You're -- you're -- you raise a good point, but my date
17 for now.

18 Final pretrial conference -- sorry -- summary judgment
19 deadline, October 1.

20 Final pretrial conference will be November 19th.

21 MR. NELSON: And I'm sorry to interrupt, Your Honor.
22 Class certification --

23 THE COURT: I'm going to come to that.

24 MR. NELSON: Okay. Thank you, Your Honor.

25 THE COURT: And then the trial will be December 1.

1 Jury trial.

2 Now, the motion for class certification must be filed
3 by March 6th, to be heard on a 49-day track.

4 Do you know what I mean by that?

5 MR. NELSON: Yes, Your Honor.

6 THE COURT: Each side gets an extra week.

7 All right. So that will give you time to take class
8 discovery if anybody wants to.

9 I have a question for you. Will it have -- be of help
10 or a hindrance to do a --

11 THE COURT REPORTER: I'm sorry? To do a what?

12 THE COURT: -- tutorial, T-U-T-O-R-I-A-L, for the
13 benefit of the judge and his law clerk on this whole problem?

14 MR. NELSON: Your Honor, I -- I would defer, but I --
15 we are at the Court's pleasure on that and are happy to do a
16 tutorial. I do think that the issues do not require one, but I
17 also think that to the extent -- I mean, in many ways I think
18 we have described the facts as they are and -- and --

19 THE COURT: Well, I -- you probably have, but it might
20 help me to understand the facts. I -- I understand a
21 reasonable amount about code. I don't understand training in
22 article intelligence, so I would like to have some -- I ask the
23 question, is it possible to give the Judge a 90-minute
24 tutorial? Both sides get equal time. You could do it through
25 the lawyers. You could do it through -- it won't be evidence.

1 It cannot be used -- it cannot be used in the case later to
2 say, oh, he told you that at -- no. It would just be kind of
3 off the record. It won't be off the record. It will be on the
4 record, but it'll be to educate me and the public about the
5 issues in the case and in some of the details --

6 MR. NELSON: Yeah.

7 THE COURT: -- of how AI works and how AI gets
8 trained.

9 So that was -- so say each side gets 45 minutes?

10 MR. WINTHROP: Okay. We can -- we will --

11 MR. NELSON: That's --

12 MR. WINTHROP: I will confer with the client. But I'm
13 sure if the Judge, you would like that, we'll make sure it gets
14 done.

15 THE COURT: I would like to do it, but I'd like you
16 two to confer and make a suggestion as to when -- when would be
17 the best time to do such a thing. I would suggest this year,
18 but it wouldn't necessarily -- it could be early next year.

19 MR. WINTHROP: Can I raise one issue, Your Honor?

20 THE COURT: Sure.

21 MR. WINTHROP: So in the other -- there are several of
22 these cases around the country. The issue of when summary
23 judgment is heard, whether it's heard before or after class
24 certification, has been an issue in all of these cases. And
25 the courts have come to different conclusions. Some have done

1 it the way yours is, with the summary judgment first. Others
2 have deferred it. Others have left it flexible.

3 From our --

4 THE COURT: No, no. Mine -- mine, the motion for
5 class certification has to be brought before the deadline for
6 summary judgment. But that doesn't preclude you -- let's say
7 you were to discover in three weeks that the books that are in
8 here are not -- have never been used --

9 MR. WINTHROP: Right.

10 THE COURT: -- by your company. You would bring a
11 summary judgment motion against that plaintiff tomorrow --

12 MR. WINTHROP: Yeah.

13 THE COURT: -- and that's okay -- without prejudice to
14 some other motion later on.

15 MR. WINTHROP: What I -- fair enough. Thank you for
16 that.

17 What I'm referring to is, for example, in the Second
18 Circuit case, this is -- goes back to the Google Books case --
19 there was a situation where the judge granted class
20 certification. It went up on appeal. The Second Circuit
21 vacated the order of class certification and said: I think
22 it'd be better if you go back and did the fair use issues
23 first.

24 And on the fair -- on consideration on -- on remand of
25 fair use, the district court found there was fair use, and that

1 mooted the class issues.

2 And so I -- I just wanted to raise that with you
3 because it may be -- and I -- this is -- I want to leave it
4 open. It may be that it would be better, and we'd want to
5 raise with you first fair use before getting into all the
6 complexities of class certification.

7 THE COURT: Well, I'm not going to rule on that now,
8 but I -- I don't think I know enough to say anything more
9 than -- okay. Let's take that example. Let's -- let's say
10 that you could show that for all three plaintiffs they --
11 the -- their books were used in a way that you think was fair
12 use.

13 MR. WINTHROP: Right.

14 THE COURT: You bring that motion saying this was fair
15 use as to these three plaintiffs. And there's no point in
16 burdening the rest of the class with an adverse ruling, so why
17 don't we just rule on these three plaintiffs?

18 That might -- that might actually moot it out. Maybe
19 not. Maybe they could get a better plaintiff. Maybe the next
20 plaintiff, the fourth plaintiff --

21 MR. WINTHROP: Yeah.

22 THE COURT: -- would have a better case. I don't
23 know.

24 But I wouldn't rule that out. I wouldn't say you have
25 to do it. I would just say the problem is going to be -- on

1 class certification a problem will be, is the issue of fair use
2 amenable to classwide proof?

3 Maybe. If all of these books are used in the same
4 way, yes. If it -- but if they're not used in the same way and
5 it varies from class member to class member, then there's a
6 problem. And there has to be a classwide method of proof, and
7 that would include the issue of fair use.

8 I don't know. You don't -- I don't know if you even
9 know enough yet to say which is the best way to do it. But
10 I'm -- I'm not -- I don't want to tie my hands and say one way
11 is better than the other at this point. I would just leave it
12 open.

13 MR. WINTHROP: Well, the -- I -- that's exactly what I
14 was requesting, the -- the one way the courts have done it, and
15 it is to -- and we agreed both sides something like this: That
16 we would -- we actually were agreeing -- in agreement on the
17 fact discovery cutoff. You moved it up, but we'll live with
18 that. But the thought was to leave that fixed, get the fact
19 discovery done, and then discuss that very issue you just
20 raised. Does it make more sense to do a summary judgment
21 motion? Does it make more sense to do a class motion?

22 We still can do that, but our thought was to leave it
23 a little more open than the schedule that you have set. I
24 guess that's my point.

25 THE COURT: When you say your -- are you referring to

1 both sides, or are you just referring to your side --

2 MR. WINTHROP: Well --

3 THE COURT: -- when you say "our thought"?

4 MR. WINTHROP: No. I think -- well, I'll let counsel
5 speak for himself. I think we discussed this morning the idea
6 of we've agreed on the fact discovery cutoff and that it may be
7 a good idea to defer this issue of what goes first, summary
8 judgment or certain -- class certification, until we know more
9 about the case. Just what you said, until we have more.

10 You know, and we could -- we could defer it until the
11 close of fact discovery, or we could even just defer it until
12 we get into fact discovery.

13 THE COURT: I have --

14 MR. WINTHROP: But I want it to be --

15 THE COURT: I have a --

16 MR. WINTHROP: -- flexible.

17 THE COURT: Okay.

18 MR. WINTHROP: Gotcha.

19 THE COURT: I have a way to deal with this. I've
20 given you a deadline, March 6th, to file for class
21 certification. As we get closer to that, if both sides were to
22 agree that, wait, we like your approach to not to do class
23 certification until after summary judgment -- that's
24 ridiculous, really. That's one-way intervention. I don't
25 know. But -- but you could then both stipulate and give me a

1 motion.

2 Now, I might -- I probably -- I won't say I would
3 automatically go along with it, but I -- but -- but right now I
4 want to have a date, a deadline date.

5 MR. WINTHROP: And so --

6 THE COURT: And as we get closer, if you think you
7 both agree this -- that this is premature, you could probably
8 talk me out of the deadline.

9 MR. WINTHROP: All right. And I trust that if the
10 feeling of good spirit we had this morning in terms of
11 agreement somehow dissipates in the case and we can't agree, I
12 assume we still can come to you and attempt to persuade you
13 on --

14 THE COURT: Yes, you could.

15 MR. WINTHROP: -- on the --

16 THE COURT: Yeah.

17 MR. WINTHROP: Yeah.

18 THE COURT: You could always do that.

19 MR. WINTHROP: Yeah, I thought.

20 THE COURT: Because everyone knows that I'm
21 Mr. Reasonable.

22 MR. WINTHROP: That's why I said it. Yep.

23 MR. NELSON: Your Honor, we do actually -- we take you
24 seriously on taking a quick deposition on -- on some of these
25 issues. We do think --

1 THE COURT: And I'm serious, too.

2 MR. NELSON: Oh, absolutely.

3 I do think that it would be more efficient if this
4 week or early next week we are able to issue requests for
5 admission and interrogatories --

6 THE COURT: Yeah.

7 MR. NELSON: -- on these issues.

8 Thank you.

9 THE COURT: Oh, yeah. This -- the purpose of this
10 discovery thing, it's open. Today under the rule, discovery is
11 wide open. No stonewalling.

12 And you could take the -- it's wide open. You could
13 take the plaintiff's depositions.

14 MR. WINTHROP: Oh, yeah.

15 THE COURT: Find out if they really wrote these books.

16 MR. WINTHROP: Let -- let me just be clear. The point
17 I was making was, is the -- are there books in Books3?

18 If that's easily demonstrated to us by what they're
19 saying, we don't -- that was the only point. We want to -- we
20 want to get to the heart of this, too, Your Honor.

21 THE COURT: Well, it could be if you took their
22 depositions somehow they've given away the copyrights.

23 MR. WINTHROP: That -- there may be some issues there,
24 too, Your Honor.

25 THE COURT: I'm telling you --

1 MR. WINTHROP: Yeah.

2 THE COURT: -- half the class actions I've always
3 done, there's always a problem with the plaintiffs that the
4 lawyers have failed to --

5 MR. WINTHROP: Yeah.

6 THE COURT: -- discover.

7 Now, maybe your firms are so great. But I'm telling
8 you they range from convicted felon -- convicted felon.
9 There's no way a convicted felon is going to represent -- have
10 a fiduciary duty unless the whole class is one of convicted
11 felons so --

12 MR. WINTHROP: You just -- just took away one of my
13 motions.

14 THE COURT: All right.

15 MR. WINTHROP: But that's okay, Your Honor.

16 THE COURT: So there. You might want to take their
17 deposition.

18 All right. How much more damage can I do this
19 morning?

20 I'm going to get out an order --

21 MR. WINTHROP: Thank you.

22 THE COURT: -- that captures this.

23 And you owe me a suggested -- I want you to talk about
24 the tutorial. And if you agree, I would like to do it, but I'm
25 not ordering it yet. But if you both say, we could do this on

1 January 10th, then I'd probably go along with that.

2 MR. NELSON: Thank you, Your Honor. And we will
3 confer on that.

4 And I do -- we have talked a lot about Books3. To be
5 clear, our allegation is that they are in the training data for
6 Anthropic. Books3 is the most glaring example of that. But I
7 think, for example, to get around the issue of -- of saying
8 that they do not use it, it would be -- they are not used at
9 the training data whatsoever, it's something that we'll explore
10 during discovery.

11 THE COURT: You should do a request to admit that
12 said: Admit that you used the Last Night -- Lost Night, a
13 novel, as part of the training.

14 MR. NELSON: Thank you, Your Honor. That's exactly
15 what --

16 THE COURT: And if they don't admit or deny something
17 that simple, there will be -- you'll be in trouble with the
18 poor judge.

19 That's something you can admit or deny easily. You
20 probably know it right now. Okay.

21 MR. NELSON: Thank you, Your Honor.

22 THE COURT: All right. Good luck to both sides.

23 MR. NELSON: Thank you.

24 MR. WINTHROP: Thank you.

25 THE COURTROOM DEPUTY: Court is adjourned.

(Proceedings conclude at 12:07 p.m.)

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C E R T I F I C A T E

I, CATHY J. TAYLOR, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED this 10th day of October, 2024.

/s/Cathy J. Taylor

Cathy J. Taylor, RMR, CRR, CRC